THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1995 CUMULATIVE SUPPLEMENT

Volume 21

Chapters 160 through 168A

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 457 S.E.2d 524. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 21 contains the general laws of a permanent nature enacted by the General Assembly through the 1995 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analysis show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1995 Session affecting Chapters 160 through 168A of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 340, p. 364.
North Carolina Court of Appeals Reports through Volume 118, p. 737.
South Eastern Reporter 2nd Series through Volume 457, p. 524.
Federal Reporter 3rd Series through Volume 53, p. 349.
Federal Supplement through Volume 882, p. 1100.
Federal Rules Decisions through Volume 160, p. 664.
Bankruptcy Reports through Volume 181, p. 677.
Supreme Court Reporter through Volume 115, p. 2020.
North Carolina Law Review through Volume 73, p. 1760.
Wake Forest Law Review through Volume 30, p. 426.
Campbell Law Review through Volume 17, p. 163.
Duke Law Journal through Volume 44, p. 1049.
North Carolina Central Law Journal through Volume 21, p. 178.
Opinions of the Attorney General.

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Article 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

CASE NOTES

Quoted in Garrity v. Morrisville Zoning Bd. of Adjustment, 115 N.C. App. 273, 444 S.E.2d 653, cert. denied, 337 N.C. 692, 448 S.E.2d 523 (1994).

§ 160A-4. Broad construction.

CASE NOTES

Quoted in Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994).

Article 3.

Contracts.

§ 160A-20. Security interests.

(a) Units of local government, as defined in subsection (h), may purchase or finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Units of local government, as defined in subsection (h), may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such construction or repair.

(c) Units of local government, as defined in subsection (h), may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such advance funding are invested pending disbursement.

(d) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any fixture, improvement, project, or property financed or purchased pursuant to such contract.

(e) A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(f) No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) As used in this section, the term "unit of local government" means any of the following:

(1) A county.
(2) A city.
(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.
(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.
(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
(8) A consolidated city-county, as defined by G.S. 160B-2(1). (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6.)

Editor's Note. — Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 19, 1995, added subdivision (h)(8).

ARTICLE 4A.

Extension of Corporate Limits.

Part 2. Annexation by Cities of Less than 5,000.

§ 160A-36. Character of area to be annexed.

Local Modification. — Town of Catawba: 1995, c. 230, s. 1.

For additional local modifications to this section, see the main pamphlet.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

CASE NOTES

III. Plans for Extending Services.
  A. In General.

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Providing Forms to Property Owners. — Subdivision (3)(b) does not require the city to provide notice to the property owners that they may request a form providing for extension of lines to their property in accordance with the financial policies of the city, and in the absence of a request, the city is not required to provide forms to property owners to be used to request extensions from their property to a major main in accordance with the city financial policies for such extensions. Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

§ 160A-48. Character of area to be annexed.

CASE NOTES

Applied in Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

§ 160A-49. Procedure for annexation.

CASE NOTES

Form for Extension. — This section, which specifically describes the procedure of annexation and the information that is required to be provided to residents of an area to be annexed, does not require that the city furnish the form described in § 160A-47 without a request. Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Where materials delivered to the court did not include a certificate that notice of the public hearing was mailed to all the property owners in the affected area as required by subsection (b), but there was ample evidence that the notices were actually mailed and no contention that the property owners did not receive the mailed notices, this irregularity was so slight that it could not have prejudiced petitioner, and it did not require remand of the ordinance. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

§ 160A-50. Appeal.

CASE NOTES

I. In General.

I. IN GENERAL.

Who May Challenge Annexation Ordinance. — Where the record of the annexation proceedings showed substantial compliance with the requirements of Chapter 160A, the burden was on petitioners to prove failure to meet those requirements or an irregularity in the proceedings which materially prejudiced their substantive rights. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Quoted in Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Cited in Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58.1. Petition for annexation; standards.

Local Modification. — City of Mooresville, 1995, c. 82, s. 1; town of Apex: 1995, c. 82, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-58.2. Public hearing.

Local Modification. — By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. Qualifications for elective office.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1. town of Tarboro: 1995, c. 73, s. 3.2.

§ 160A-63. Vacancies.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1; town of Tarboro: 1995, c. 73, s. 1.

For additional local modifications to this section, see the main pamphlet.

Part 2. Mayor and Council.

Part 3. Organization and Procedures of the Council.

§ 160A-74. Quorum.

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1.

§ 160A-81. Conduct of public hearings.

CASE NOTES

Application to Annexation Hearings. — Nothing in this section indicates that its application should be limited to public hearings not concerning annexation. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

ARTICLE 7.

Administrative Offices.

Part 4. Personnel.

§ 160A-163. Retirement benefits.

(a) The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and bequests in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid.

(c) No city shall make payments into any retirement system or plan established or authorized by local act of the General Assembly unless the plan is certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section.

(d) A qualified actuary means an individual certified as qualified by the Commissioner of Insurance, or any member of the American Academy of Actuaries.

(e) A city which is providing health insurance under G.S. 160A-162(b) may provide health insurance for all or any class of former employees of the city who are receiving benefits under subsection (a) of this section or who are 65 years of age or older. Such health insurance may be paid entirely by the city, partly by the city and former employee, or entirely by the former employee, at the option of the city.

(f) The council may provide a deferred compensation plan. Where the council provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S 159-30 and G.S. 159-31. Cities may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(g) Should the council provide for a retirement plan, a plan which supplements a State-administered plan, or a special fund, any benefits payable from such plan or fund on account of the disability of city employees may be restricted with regard to the amount which may be earned by the disabled former employee in any other employment, but only to the extent that the earnings of disability beneficiaries in the Local Governmental Employees' Retirement System are restricted in accordance with G.S. 128-27(e)(1). (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1981, c. 347, s. 2; 1991, c. 277, s. 2; 1995, c. 259, s. 3.)

Effect of Amendments. — The 1995 amendment, effective December 31, 1995, added subsection (g).

§ 160A-167. Defense of employees and officers; payment of judgments.

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

§ 160A-168. Privacy of employee personnel records.

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

Article 8.

Delegation and Exercise of the General Police Power.

§ 160A-184. Noise regulation.

Local Modification. — Town of Kill Devil Hills: 1995, c. 84, s. 1; town of Kitty Hawk: 1995, c. 84, s. 1; town of Manteo: 1995, c. 196, s. 4; town of Nags Head: 1995, c. 84, s. 1; town of Southern Shores: 1995, c. 84, s. 1.

§ 160A-197: Repealed by Session Laws 1995, c. 501, s. 4, effective July 28, 1995.

ARTICLE 10.

Special Assessments.

§ 160A-217. Petition for street or sidewalk improvements.

Local Modification. — City of Beech Mountain: 1995, c. 133, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-237. Authority to hold water and sewer assessments in abeyance.

Local Modification. — Cities of Belmont, Gastonia, and Mount Holly: 1995, c. 341, s. 1; town of Stanley: 1995, c. 341, s. 1.

By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

Local Modification. — (As to Article 12) Cleveland: 1995, c. 201, s. 1; (As to Article 12) Sanford: 1995, c. 154, s. 1; city of Hendersonville: 1995, c. 106, s. 1; (As to Article 12) city of Lincolnton: 1995, c. 57, ss. 1, 2; (As to Article 12) town of Red Springs: 1995, c. 203, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-272. Lease or rental of property.

Local Modification. — By virtue of Session Laws 1995, c. 73, s. 4, the town of Tarboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

§ 160A-274. Sale, lease, exchange and joint use of governmental property.

Local Modification. — Gaston: 1995, c. 399, ss. 1, 3; Greene: 1995, c. 399, ss. 1, 3; Montgomery: 1995, c. 154, s. 3; Sampson: 1995, c. 399, ss. 1, 3.

For additional local modifications to this section, see the main pamphlet.

§ 160A-279. Sale of property to entities carrying out a public purpose; procedure.

Local Modification. — By virtue of Session Laws 1995, c. 56, s. 1, the city of Greensboro should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-297. Streets under authority of Board of Transportation.

CASE NOTES

Quoted in Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

Local Modification. — City of Winston-Salem: 1995, c. 92, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

Local Modification. — City of Lumberton: 1995, c. 53, ss. 1, 2.

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

CASE NOTES

Cited in Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

(a) Connections. — A city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(b) Solid Waste. — A city may require an owner of improved property to do any of the following:

(1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.

(2) Separate materials before the solid waste is collected.

(3) Participate in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A city may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the city or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the city or its designee, then ownership of these materials is transferred to the city or its designee.

(4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

(c) A city may impose a fee for the solid waste collection service provided under subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of collection. (1917, c. 136, subch. 7, s. 2; C.S., s. 2806; 1971, c. 698, s. 1; 1979, c. 619, s. 14: 1981, c. 823; 1989, c. 741, s. 2; 1991, c. 698, s. 2; 1993, c. 165, s. 2; 1995, c. 511, s. 4.)

Editor's Note. —

Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in the first sentence of subsection (a) substituted "developed property on which there are situated one or more residential dwelling units or commercial establishments", for "improved property", deleted "upon or" preceding "within a reasonable distance", substituted "owned, leased as lessee, or" for "owned or leased and", and added "or on behalf of the city".

ARTICLE 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

Local Modification. — Town of Huntersville: 1995, c. 364, ss. 3.1, 3.2.

For additional local modifications to this section, see the main pamphlet.

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

§ 160A-364.1. Statute of limitations.

CASE NOTES

Injury in Clear and Concrete Fashion. — Plaintiffs' cause of action, for statute of limitations purposes, arose at the time the city's billboard ordinance first became effective because it was then that the regulation injured plaintiffs' property in clear and concrete fashion. Capital Outdoor Adv., Inc. v. City of Raleigh, 337 N.C. 150, 446 S.E.2d 289, rehearing denied, 337 N.C. 807, 449 S.E.2d 566 (1994).

Part 3. Zoning.

§ 160A-381. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits.

(b) **(Expires June 30, 2001)** Specifically, the city may require that a pawnshop as defined in Chapter 91A of the General Statutes may only be operated with a special use permit or a conditional use permit, or may have an overlay district wherein a pawnshop as defined in Chapter 91A of the General Statutes may only be operated with a special use permit or a conditional use permit, and the ordinance may provide that the permit may be issued only upon a finding that the pawnshop would not be deleterious to the neighborhood in which it is to be located. Conditions and safeguards on permits for pawnshops may be imposed notwithstanding G.S. 91A-12. This subsection applies only to cities with a population of 200,000 or over, which have a median family income of forty thousand dollars ($40,000) or over, according to the most recent decennial federal census.

(c) Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1; 1987, c. 747, s. 11; 1995, c. 357, s. 1.)

Editor's Note. — Session Laws 1995, c. 357, s. 2, provides that subsection (b) as enacted by s. 1 expires June 30, 2001.

Effect of Amendments. — The 1995 amendment, effective June 29, 1995, added the subsection (a) and (c) designations, and added subsection (b).

CASE NOTES

I. In General.

I. IN GENERAL.

Cited in Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 160A-364. The advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a city shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2; 1987, c. 807, s. 1; 1989 (Reg. Sess., 1990), c. 980, s. 1; 1993, c. 469, s. 1; 1995, c. 546, s. 1.)

Editor's Note. —

Session Laws 1995, c. 546, which amended this section , in s. 2.1 provides: "Any local act in conflict with this act is repealed to the extent of the conflict."

Effect of Amendments. —

The 1995 amendment, effective July 29, 1995, in subsection (a), in the second sentence, substituted "map amendment" for "classification action involving a parcel of land" following "zoning", substituted "a public hearing on the proposed amendment" for "the proposed classification" following "mailed a notice of", and added the third sentence; and rewrote subsection (b).

§ 160A-385. Changes.

CASE NOTES

II. Protests.

II. PROTESTS.

Permit issued to respondent was not a building permit under subsection (b) although the zoning administrator stated that the permit that was issued to respondent was the equivalent of a building permit where the permit did not contain the compliance provision required by § 160A-417 and in the notice sent to adjoining property owners, the zoning administrator referred to respondent's permit as a "zoning permit." Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-385.1. Vested rights.

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

CASE NOTES

Cited in Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-388. Board of adjustment.

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Appellate Jurisdiction of Board. — Town board of adjustment did not have jurisdiction to review and reverse the decision of the town board of commissioners. Garrity v. Morrisville Zoning Bd. of Adjustment, 115 N.C. App. 273, 444 S.E.2d 653, cert. denied, 337 N.C. 692, 448 S.E.2d 523 (1994).

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, cert. denied, 338 N.C. 309, 451 S.E.2d 635 (1994); Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438, cert. denied, 338 N.C. 524, 453 S.E.2d 170 (1994); Budd v. Davie County, 116 N.C. App. 168, 447 S.E.2d 449 (1994).

II. JUDICIAL REVIEW.

Scope of Judicial Review. — The superior court, pursuant to a writ of certiorari under subsection (e), only has the power to review the issue of whether a permit was properly granted or denied. Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

Part 5. Building Inspection.

§ 160A-411. Inspection department.

CASE NOTES

Local Laws Providing for Performance of Inspections Unconstitutional. — Inspections pursuant to the State Building Code affect health and sanitation, thus acts that altered the legislative directive of this section that the city shall determine who will perform the inspections under the Code were local legislation that shifted responsibility for enforcement of laws affecting the health of the public and were barred under Art. II, § 24 of the Constitution. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Acts Shifting Responsibility for Inspections Created Unreasonable Classification. — No rational basis justified the separation of New Bern from all other cities in North Carolina for special legislative attention regarding the designation of an appropriate inspection department, and acts which shifted the responsibility for enforcing the building code from New Bern to Craven County created an unreasonable classification and were therefore local acts. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Failure of City and County to Agree on Provision of Inspection Services. — This section does not mandate that the city and the county must agree regarding the provision of inspection services; rather, it provides the options available to the city in determining who shall perform the inspections, one of which is arranging for the county to perform them, and if the city fails to provide inspection services via any of the four options, the statute dictates that the Commissioner of Insurance shall arrange for the provision of the services. The legislature does not need to intervene in the process should the county and the city fail to agree; instead, the legislature has provided that the Commissioner of Insurance shall do so should the city fail to follow the requirements of the statute. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

§ 160A-413. Joint inspection department; other arrangements.

CASE NOTES

Quoted in City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

§ 160A-417. Permits.

Local Modification. — Scotland: 1995, c. 124, s. 1.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Permit issued to respondent was not a building permit under § 160A-385(b) although the zoning administrator stated that the permit that was issued to respondent was the equivalent of a building permit where the permit did not contain the compliance provision required by this section and in the notice sent to adjoining property owners, the zoning administrator referred to respondent's permit as a "zoning permit." Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

§ 160A-435. Establishment of fire limits.

CASE NOTES

Liability for Torts of Officers. — A municipality was not immune from liability for the torts of defendant officers to the extent of defendant town's liability insurance. Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994), cert. denied, 339 N.C. 737, 454 S.E.2d 648 (1995).

Part 6. Minimum Housing Standards.

§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or

occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of 163,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census.

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to

proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition. (1939, c. 287, s. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 70; 1983, c. 698; 1987, c. 542; 1989, c. 562; 1991, c. 208, s. 1; c. 315, s. 1; c. 581, s. 1; 1993, c. 539, s. 1095; c. 553, ss. 58, 59; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 347, s. 1; c. 509, s. 112.)

Local Modification. — By virtue of Session Laws 1995, c. 158, Buncombe, Transylvania, the cities of Asheville, Brevard, Charlotte, Gastonia, Greensboro, Hendersonville, and Wilmington should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. —

Session Laws 1995, c. 347, s. 1, effective June 29, 1995, in the first sentence of subdivision (5a) added the first subdivision "a." designation, added "In a municipality located in counties which have a population in excess of 163,000 by the last federal census, other than municipalities with a population in excess of 190,000 by the federal census" in that subdivision "a.", added the first subdivision "b.", and made punctuation changes.

Session Laws 1995, c. 509, s. 112, effective July 29, 1995, substituted "subdivisions (4) and (5)" for "subdivisions 4 and 5" near the end of subdivision (7).

Part 8. Miscellaneous Powers.

§ 160A-456. Community development programs and activities.

(a) Any city is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a city may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any city council may exercise directly those powers granted by law to municipal redevelopment commissions and those powers granted by law to municipal housing authorities, and may do so whether or not a redevelopment commission or housing authority is in existence in such city. Any city council desiring to do so may delegate to any redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any city council and any board of county commissioners may by agreement undertake or carry out for each other any specified community development activities. Any city council may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any city council any specified community development activities.

(c) Any city council undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any city council proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such city.

(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes.

(e) Repealed by Session Laws 1985, c. 665, s. 5.

(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "severely distressed counties", as designated under G.S. 105-130.40(c), for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 105-130.40(c) shall not affect this subsection as to designations of severely distressed counties made prior to its expiration. (1975, c. 435, s. 1; c. 689, s. 1; c. 879, s. 46; 1983, c. 908, s. 4; 1985, c. 665, s. 5; 1987, c. 464, s. 10; 1987 (Reg. Sess., 1988), c. 992, s. 2; 1995, c. 310, s. 3.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, added subsection (d1).

ARTICLE 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, or other local political subdivision, authority, or

agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1; 1981, c. 641; 1995, c. 458, s. 3.)

Editor's Note. — Session Laws 1995, c. 458, s. 6, contains a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 19, 1995, added "facility authority created under Part 4 of this Article" in subdivision (2).

Part 3. Regional Sports Authorities.

§ 160A-480: Reserved for future codification purposes.

Part 4. Facility Authorities.

§ 160A-480.1. Short title.

This Part is the "Facility Authority Act" and may be cited by that name. (1995, c. 458, s. 1.)

Editor's Note. — Session Laws 1995, c. 458, s. 6, contains a severability clause.

Session Laws 1995, c. 408, s. 9, made this Part effective upon ratification. The Act was ratified July 19, 1995.

§ 160A-480.2. Definitions.

The following definitions apply in this Part:

(1) Authority. — A Facility Authority.

(2) Credit facility. — An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.

(3) Member. — A person appointed to a facility authority.

(4) Par formula. — A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(5) Regional facility. — A facility consisting of an arena, coliseum, or other buildings or both, or areas where sports, fitness, health, recreational, entertainment, or cultural activities can be conducted. The facility may be composed of buildings grouped into complexes or separated from each

other and may include ancillary support facilities, such as those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, parking, and food services. The facility should be designed to attract to the State as many major regional, national, and international tournaments, events, championships, training centers, training camps, and headquarters for the governance of various sports, associations, and events as possible. The regional facility shall be constructed on land owned by the State. (1995, c. 458, s. 1.)

§ 160A-480.3. Creation of Authority; additional membership.

(a) Creation. — An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) Membership. — An authority shall have eight or 13 members. Members shall be chosen for terms as follows:

(1) Four shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority;

(2) Four shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:
   a. Two members shall be appointed by the board of commissioners of that county;
   b. Two members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census; and
   c. One member shall be appointed jointly by the mayors of all the cities in that county.

The board of commissioners may not appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. — The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. — The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws which may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.
(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.
(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. — An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. — An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. — If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or
(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter. (1995, c. 458, s. 1.)

§ 160A-480.4. Powers of an Authority.

An Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Part. These powers may include any one or more of the following:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State or any of its agencies or political subdivisions, the United States, any member unit, or any private entity.
(2) To study, design, plan, construct, own, and operate a regional facility.
(3) To employ consultants and employees as may be required in the judgment of the Authority, to fix and pay their compensation from funds available to the Authority. In employing consultants, the Authority shall promote participation by minority businesses.

(4) To contract with any public or private entity, and The University of North Carolina or any constituent institution of The University of North Carolina may enter into any such contract if the function is one The University of North Carolina or any constituent institution of The University of North Carolina could undertake separately.

(5) To adopt bylaws for the regulation of its affairs and the conduct of its business, and to adopt rules in connection with the performance of its functions and duties.

(6) To adopt an official seal.

(7) To acquire and maintain administrative offices.

(8) To sue and be sued in its own name, and to plead and be impleaded.

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any real or personal property or interest therein.

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any of these purposes with respect to, any real or personal property or interest therein.

(12) Subject to the provisions of this Part, to pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including a leasehold interest, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by the Authority from any and all sources.

(13) Subject to the provisions of this Part, to borrow money to finance part or all of a regional facility, to issue revenue bonds or notes, to refund any revenue bonds or notes issued by the Authority, or to provide funds for other corporate purposes of the Authority.

(14) To use officers, employees, agents, and facilities of units of local government or constituent institutions of The University of North Carolina for purposes and upon the terms that are mutually agreeable between the Authority and the unit or institution.

(15) To develop and make data, plans, information, surveys, and studies of public facilities within the area where constituent institutions of The University of North Carolina are located, and to prepare and make recommendations in regard thereto.

(16) To set and collect fees and charges for the use of the regional facility.

(17) To pay for services rendered by underwriters, financial consultants, or bond attorneys in connection with the issuance of revenue bonds or notes of the Authority out of the proceeds of the bonds or notes. In employing consultants, underwriters, attorneys, and others, the Authority shall promote participation by minority businesses.

(18) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20. (1995, c. 458, s. 1.)

§ 160A-480.5. Dissolution of Authority.

The General Assembly may dissolve an authority if all bonds or notes issued by the Authority and all other obligations incurred by the Authority have been fully paid or satisfied. In such event any assets of the Authority shall become the property of the county authorized to levy a room occupancy and prepared food and beverage tax to be distributed to the Authority. (1995, c. 458, s. 1.)

§ 160A-480.6. Construction contracts.

Article 8 of Chapter 143 of the General Statutes applies to a construction contract of an Authority. An Authority may solicit bids on the basis of separate specifications for the branches or work described in G.S. 143-128(a) and on a single-prime contract basis and accept the lowest bid. (1995, c. 458, s. 1.)

§ 160A-480.7. Seating at regional facility arena.

The Authority shall ensure that at least fifty percent (50%) of the seats for an athletic event that is sponsored by a constituent institution of The University of North Carolina whose principal campus is in the territorial jurisdiction of the authority and is held at the arena of the regional facility are made available to students at that constituent institution and members of the general public. (1995, c. 458, s. 1.)

§ 160A-480.8. Bonds.

(a) Terms. — An Authority may provide for the issuance, at one time or from time to time, of bonds or notes to carry out its corporate purposes. The principal of, the interest on, and any premium payable upon the redemption of the bonds or notes shall be payable from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, from any available revenues or other funds provided for this purpose. The bonds or notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority. Notes and bonds shall mature at times determined by the Authority, not exceeding 40 years from the date of issue. The Authority shall determine the form and the manner of execution of the bonds or notes, and shall fix the denomination of the bonds or notes and the place of payment of principal and interest. In case an officer whose signature or a facsimile of whose signature appears on any bonds or notes ceases to be an officer before the delivery of the bond or note, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The Authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

Bonds or notes may be issued under this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau, or other agency of the State or of a political subdivision of the State, and without any other proceedings or conditions except as specifically required by this Part or the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds or notes which have been mutilated, destroyed, or lost.

(b) Use of Proceeds. — The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of a bond or note and with any trust agreement securing the bond or note. If the proceeds of a bond or note of any issue, by reason of increased construction costs or error in estimates or otherwise, is less than the cost, additional bonds or notes may in like manner be issued to provide the amount of the deficiency.

(c) Security. — Bonds or notes issued by an Authority may be secured in one or more of the following ways:

(1) By the revenues of the regional facility.

(2) By security interests in real or personal property or interest therein, including a leasehold interest, acquired with the proceeds of the bonds or notes or improved with the proceeds of the bonds or notes as described in subsection (e) of this section.

(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the county to exercise any power of taxation, or restrict the ability of the county to repeal the tax.

The security for the bonds or notes shall be specified in the resolution or trust instrument authorizing the bonds or notes.

(d) Revenues. — The Authority may pledge to the payment of its revenue bonds or notes the revenues from the regional facility, including revenues from improvements, betterments, or extensions to the facility. The Authority may establish, maintain, revise, charge, and collect such rates, fees, rentals, or other charges for the use, services, and facilities of or furnished by a regional facility and provide methods of collection of and penalties for nonpayment of these rates, fees, rentals, or other charges. Except as otherwise permitted, the rates, fees, rentals, and charges fixed and charged shall be in an amount that will produce sufficient revenues, with any other available funds, to meet the maintenance and operation expenses of the regional facility as well as any improvements and renewals and replacements to the facility, including reserves to pay the principal, interest, and redemption premium due, if any, on any bonds or notes secured by the facility, and to fulfill the terms of any agreements made by the Authority with the holders of bonds or notes secured by revenues of the facility.

(e) Security Interests. — Bonds or notes may be secured by security interests in any real or personal property or interest therein, including a leasehold interest, either acquired with the proceeds of bonds or notes, or upon which improvements are provided from the proceeds of bonds or notes. The security interest may cover all real and personal property acquired or improved or any portion of the property, except that if the property subject to the security interest is a leasehold interest, the security interest is not to the fee simple title. The Authority is authorized to enter into deeds of trust, mortgages, security agreements, and similar instruments as shall be necessary to carry out the powers in this subsection. Bonds or notes may also be secured by security interests in any real or personal property conveyed to the Authority.

In the event the Authority fails to perform its obligations with respect to the bonds or notes and foreclosure or similar sale of property subject to a security interest occurs, a deficiency judgment may not be rendered against the Authority except to the extent that the deficiency is payable from either revenues from the regional facility or from any revenues dedicated by act of the General Assembly to the Authority.

(f) Issuance. — The issuance of bonds or notes of the Authority is subject to the approval of the Local Government Commission. Upon the filing with the Local Government Commission of a resolution of the Authority requesting that its bonds or notes be sold, the Commission shall determine the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. In determining whether to approve a proposed bond or note issue of the Authority, the Local Government Commission shall consider the criteria for approval of revenue bonds under G.S. 159-86. The Local Government Commission shall approve the proposed issue if it determines the bond or note issue will meet such criteria and will effect the purposes of this Part. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interests of the Authority and to effect the purposes of this Part.

(g) Certification of Approval. — Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Part. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Part.

(h) State Pledge. — The State pledges to the holder of a bond or note issued under this Part that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the facility for which the bond or note was issued.

(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.

(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Part that the State will not impair the rights and remedies of the holder concerning the bond or note.

(i) Investment Securities. — All bonds and notes and interest coupons, if any, issued under this Part are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

(j) Details of Bonds or Notes. — In fixing the details of bonds or notes, the Authority may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.
(2) Be additionally supported by a credit facility.
(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.
(4) Be capital appreciation bonds.
(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.
(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(k) Basis of Investment. — In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.
(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
(3) Contracts to exchange cash flows or a series of payments.
(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section. (1995, c. 458, s. 1.)

§ 160A-480.9. Trust agreement or resolution.

In the discretion of the Authority, any bonds or notes issued under this Part may be secured by a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The trust instrument or the resolution of the Authority authorizing the issuance of bonds or notes may pledge and assign all or any part of the revenues, funds, and other property provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds, and condemnation awards, and may convey or mortgage property to secure a bond issue as provided in this Part.

The revenues and other funds derived from the project, except any part thereof that may be necessary to provide reserves therefor, if any, shall be set aside at regular intervals as may be provided in the resolution or trust instrument in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on the bonds or notes as they become due and of the redemption price or the purchase price of bonds retired by call or purchase as therein provided. This pledge shall be valid and binding from the time the pledge is made. The revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution or trust instrument. The resolution or trust instrument may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the resolution or trust instrument.
(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.
(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.
(4) Rights to bring and maintain other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. All expenses incurred in carrying out the provisions of the resolution or trust instrument may be treated as a part of the cost of the project in connection with which bonds or notes are issued or as an expense of administration of the project.

The Authority may subordinate bonds or notes to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest securing bonds or notes.

Any owner of bonds or notes issued under the provisions of this Part or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Authority pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Part or by the trust agreement or resolution by the Authority or by any officer of the Authority. (1995, c. 458, s. 1.)

§ 160A-480.10. Trust funds.

Notwithstanding any other provision of law to the contrary, all money received pursuant to the authority of this Part, whether as proceeds from the sale of bonds or notes or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Part. The resolution authorizing the issuance of, or the trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested and reinvested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, the moneys shall be deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purpose hereof, subject to any regulations this Part and the resolution or trust agreement may provide. Any of these moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time. (1995, c. 458, s. 1.)

§ 160A-480.11. Faith and credit of State and units of local government not pledged.

Bonds or notes issued under this Part shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, property, and other funds pledged for their payment. The bonds or notes issued by an Authority shall contain a statement that the Authority is obligated to pay the bond or note or the interest on the bond or note only from the revenues, property, or other funds pledged for their payment and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged as security for the payment of the principal of or the interest or premium on the bonds or notes. (1995, c. 458, s. 1.)

§ 160A-480.12. Revenue refunding bonds.

The Authority may issue refunding bonds or notes for one or more of the following purposes:

(1) Refunding any outstanding bonds or notes issued under this Part, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption.

(2) Constructing improvements, additions, extensions or enlargements of the project, or projects in connection with which the bonds or notes to be refunded have been issued.

(3) Paying all or any part of the cost of any additional project or projects.

Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds issued under this section may be sold or exchanged for outstanding bonds or notes issued under this Part and, if sold, the proceeds of the refunding bonds may be applied, in addition to any authorized purposes, to the purchase, redemption, or payment of outstanding bonds or notes.

Pending the application of the proceeds of refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1995, c. 458, s. 1.)

§ 160A-480.13. Bonds eligible for investment.

Bonds and notes issued under this Part are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is authorized by law. This section does not apply to any State pension or retirement fund or a pension or retirement fund of a political subdivision of the State. (1995, c. 458, s. 1.)

§ 160A-480.14. Taxation of revenue bonds.

Any bonds and notes issued by the Authority under the provisions of this Part shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes issued by an Authority under the provisions of this Part shall not be subject to taxation as to income. (1995, c. 458, s. 1.)

§ 160A-480.15. Members and officers not liable.

No member or officer of an Authority shall be subject to any personal liability or accountability by reason of the execution of any bonds or notes or the issuance of any bonds or notes. (1995, c. 458, s. 1.)

§§ 160A-481 through 160A-484: Reserved for future codification purposes.

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

CASE NOTES

City Engaging in Proprietary Function Not Immune. — City which operated a natural gas supply utility was engaged in a proprietary function and, therefore, was not immune from liability for any torts which were proximately caused by it in providing this service. Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

Waiver of Immunity When Engaging in Governmental Function. — Where a municipality engages in a governmental function, governmental immunity is applicable, and a city may waive its immunity from civil tort liability by purchasing liability insurance. Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

Allegations of Waiver Required. — If plaintiff does not allege a waiver of immunity by the purchase of insurance, the plaintiff has failed to state a claim against governmental unit or officer or employee. Morrison-Tiffin v. Hampton, 117 N.C. App. 494, 451 S.E.2d 650 (1995).

Cited in Mullins v. Friend, 116 N.C. App. 676, 449 S.E.2d 227 (1994).

Article 22.

Urban Redevelopment Law.

§ 160A-516. Issuance of bonds.

(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the commission (and the bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable on the bonds, nor in any event shall the bonds or obligations be payable out of any funds or properties other than those of the commission acquired for the purpose of this Article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities. The bonds are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds may be issued by a commission under this Article notwithstanding any debt or other limitation prescribed in any statute. This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission under this Article and this authorization and issuance shall not be subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) Bonds shall be sold by the redevelopment commission at either public or private sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the public sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least 10 days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the City of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission at private sale upon such terms and conditions as are mutually agreed upon between the commission and the purchaser. No bonds issued pursuant to this Article shall be sold at less than par and accrued interest. The provisions of the Local Government Finance Act shall not be applicable with respect to bonds sold or issued under this Article.

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this Article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Article.

(g) Bonds (including, without limitation, interim and long-term notes) may be issued or sold under this Article at private sale upon such terms and conditions as may be negotiated and mutually agreed upon by the commission and the purchaser (who may be the government or other public or private lender or purchaser). (1951, c. 1095, s. 13; 1961, c. 837, s. 10; 1971, c. 87, s. 3; 1973, c. 426, s. 75; 1981, c. 907, ss. 3, 4; 1995, c. 46, s. 20.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in subsection (b), in the fourth sentence deleted "and together with interest thereon and income therefrom, shall be exempt from all taxes" from the end; added the fifth and sixth sentences; and made stylistic changes throughout the subsection.

§§ 160B-2.3 through 160B-2.6: Reserved for future codification purposes.

Chapter 160B.

Editor's Note. — The legislation and annotations affecting Chapter 160B have been included in a recently published replacement chapter.

Chapter 161.

Register of Deeds.

Article 1.

The Office.

Sec.
161-10. Uniform fees of registers of deeds.

Article 2.

The Duties.

161-22. Index of registered instruments.
161-27. Register of deeds failing to discharge duties; penalty.

Article 3.

Registers of Deeds' Supplemental Pension Fund Act of 1987.

Sec.
161-50.3. Disbursements.
161-50.4. Eligibility.

ARTICLE 1.

The Office.

§ 161-10. Uniform fees of registers of deeds.

(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be six dollars ($6.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00), for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. — For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be ten dollars ($10.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. — For issuing a license forty dollars ($40.00); for issuing a delayed certificate with one certified copy five dollars ($5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy five dollars ($5.00).

(3) Plats. — For each original or revised plat recorded nineteen dollars ($19.00); for furnishing a certified copy of a plat three dollars ($3.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded five dollars ($5.00). This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another county five dollars ($5.00); for registration when necessary papers prepared in another county, with one certified copy five dollars ($5.00); for preparation of necessary papers and registration in the same county, with one certified copy ten dollars ($10.00).

(6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction two dollars ($2.00).

(7) Legitimations. — For preparation of all documents concerned with legitimations seven dollars ($7.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license three dollars ($3.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section three dollars ($3.00) for the first page, plus one dollar ($1.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof two dollars ($2.00).

(11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, or index pages, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.

(12) Notarial Acts. — For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10A-10. This fee shall not be charged if the act is performed as a part of one of the services for

which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.

(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.

(15) Master Forms. — Such fees as are provided for instruments in general.

(16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 two dollars ($2.00).

(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10A-8 five dollars ($5.00).

(18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2; 1983, c. 894, ss. 2, 3; 1987, c. 792, ss. 2-5; 1989, c. 523, s. 1; 1991, c. 636, s. 18; c. 683, s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 49; 1993, c. 425, s. 1.)

Editor's Note. — Session Laws 1993, c. 425, s. 1, which amended this section, became effective October 1, 1993, and applied to fees collected and entries made on or after that date.

ARTICLE 2.

The Duties.

§ 161-22. Index of registered instruments.

(a) The register of deeds shall provide and keep in her or his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds, and other instruments required or authorized to be registered, and such indexes shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors, or obligees. The full names of parties shall be entered in the indexes in accordance with the minimum indexing standards adopted pursuant to G.S. 147-54.3(b) and (b1). Reference shall be made, opposite each name, to the book and page or other location where the instrument is registered. All instruments shall be indexed on either the temporary or permanent index within 24 hours of registration. The register of deeds shall not be required to index an instrument that is part of a document containing multiple instruments, as defined in G.S. 161-10(a)(1), unless the title of that instrument is shown on the first page of the document and the additional registration fee is paid as required by G.S. 161-10(a)(1).

(b) In offices using the "Family" index system, the index entry shall show the name of each party under the appropriate family name and the initials of the party under the appropriate alphabetical arrangement of the index. In offices using indexing systems having subdivisions of the letters of the alphabet, a registered instrument shall be deemed properly registered only when it has been indexed under the correct subdivision of the appropriate letter of the alphabet.

(c) Instruments affecting real property shall be indexed in the appropriate real property indexes, and instruments affecting personal property shall be indexed in the appropriate personal property indexes. Instruments affecting both real and personal property shall be indexed in both the real and personal property indexes.

(d) Deeds of trust may be indexed in the names of the grantor and trustee only.

(e) Certificates filed for recording pursuant to G.S. 59-2, the Uniform Limited Partnership Act, shall be indexed only under the names of the partnership and each of the general partners. The register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that such documents are indexed only in the names of the partnership and of each of the general partners.

(f) The alphabetical indexes required by this section may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the index is maintained in a computer or other automated data processing machine, the register of deeds shall, at least once each month, obtain from the computer or other automated data-processing machine a printed copy on paper or film, or a tape or disk, of all index entries made since the previous printed or filmed copy, or tape or disk, was obtained. These printed or filmed copies, tapes or disks, shall be retained as security copies and may not be altered or destroyed until a subsequent security copy is made containing the index entries from all previous security copies.

(g) The register of deeds may adopt rules establishing indexing procedures and the format of the indexes. The rules shall be in conformity with the requirements of this section and of other applicable statutes. The rules may address such subjects, by way of example and not limitation, as the indexing of business firms, the indexing of names containing numerals, and the indexing of government agencies. The rules shall be posted in at least two prominent places in the register of deeds' office and shall also be placed near the index books or in user manuals in offices using automated indexing systems. From and after the effective date of such rules, a registered instrument shall be deemed properly registered only when it has been indexed according to the rules.

(h) No instrument shall be deemed registered until it has been indexed as provided in this section.

(i) A violation of this section shall constitute a Class 1 misdemeanor. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C.S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262; 1973, c.

1136, ss. 1, 2; 1983, c. 127; c. 699, ss. 1, 3; 1989, c. 523, s. 2; 1993, c. 178, ss. 1, 2, 4, 5; c. 539, s. 1096; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. —

Session Laws 1993, c. 178, which amended this section, in s. 6 provides: "Index entries made pursuant to G.S. 161-22 prior to the effective date of Sections 1 and 2 of this act that omitted symbols, spaces, commas, hyphens, periods, dashes, or similar punctuation, or that omitted the word 'The' when it was the first word in the name of the party, or that placed the word 'The' at the end of the index entry rather than at the beginning when it was the first word in the name of a party, are hereby declared sufficient and valid."

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1993, c. 178, s. 4, effective January 1, 1995, in subsection (a), in the present first sentence, substituted "registered, and" for "registered. Subject to any indexing rules adopted pursuant to subsection (g) of this section," and added the present second sentence.

Session Laws 1993, c. 178, s. 5, effective January 1, 1995, rewrote the third sentence of subsection (g).

Session Laws 1993, c. 539, s. 1096, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (i). For applicability of this amendment, see the editor's note.

§ 161-22.3. Minimum standards for land records management.

Editor's Note. — Session Laws 1993, c. 178, s. 3, effective June 17, 1993, amending Session Laws 1991, c. 697, s. 3, provides that this section becomes effective January 1, 1995.

Session Laws 1993, c. 178, which amended § 161-22 and changed the effective date of this section, in s. 6 provides: "Index entries made pursuant to G.S. 161-22 prior to the effective date of Sections 1 and 2 of this act that omitted symbols, spaces, commas, hyphens, periods, dashes, or similar punctuation, or that omitted the word 'The' when it was the first word in the name of the party, or that placed the word 'The' at the end of the index entry rather than at the beginning when it was the first word in the name of a party, are hereby declared sufficient and valid."

§ 161-27. Register of deeds failing to discharge duties; penalty.

If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office. (1868, c. 35, s. 18; Code, s. 3659; Rev., s. 3599; C.S., s. 3567; 1993, c. 539, s. 1097; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" and deleted "besides other punishments at the discretion of the court".

ARTICLE 3.

Registers of Deeds' Supplemental Pension Fund Act of 1987.

§ 161-50.3. Disbursements.

(a) Immediately following July 1, 1988, the Department of State Treasurer shall divide an amount equal to forty-five percent (45%) of the assets of the Fund at the end of the preceding fiscal year into equal shares and disburse the same as monthly pension payments to all eligible retired registers of deeds as of July 1, 1988, payable in accordance with the method described in G.S. 161-50.5, except that such pension benefit shall be computed for a six-months basis beginning with the month of July, 1988.

(b) Immediately following January 1, 1996, and the first of January of each succeeding calendar year thereafter, the Department of State Treasurer shall divide an amount equal to ninety-three percent (93%) of the assets of the Fund at the end of the preceding calendar year into equal shares and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) The remaining seven percent (7%) of the Fund's assets as of December 31, 1995, and at the end of each calendar year thereafter, may be used by the Department of State Treasurer in administering the provisions of this Article.

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay any pension benefits or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced. (1987, c. 792, s. 1; 1995, c. 259, s. 2.)

Effect of Amendments. — The 1995 amendment, effective December 31, 1995, in subsection (b) substituted "January 1, 1996" for "January 1, 1989", and substituted "ninety-three percent (93%)" for "ninety percent (90%)"; in subsection (c) substituted "seven percent (7%)" for "ten percent (10%)" and deleted the former last sentence which read "For the six month period commencing July 1, 1988, five percent (5%) of the Fund's assets at the end of the preceding fiscal year may be used for this purpose."

§ 161-50.4. Eligibility.

(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan before June 30, 1988, and those who retire on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article.

(a1) Notwithstanding the provisions of subsection (a) of this section, effective January 1, 1996, any county register of deeds who separates from service as register of deeds after completing at least 10 years of eligible service as register of deeds, but who does not commence retirement with the Local Governmental Employees' Retirement System, shall have the right to receive a monthly pension under this Article payable upon retirement with the Local Governmental Employees' Retirement System.

(b) Each eligible retired register of deeds as defined in subsection (a) or (a1) of this section relating to service and retirement status on January 1 of each calendar year shall be entitled to receive a monthly pension under this Article beginning with the month of January of the same calendar year. (1987, c. 792, s. 1; 1991, c. 443, s. 1; 1995, c. 259, s. 1.)

Effect of Amendments. — The 1995 amendment, effective December 31, 1995, added subsection (a1), and inserted "or (a1)" following "subsection (a)" in subsection (b).

Chapter 162.
Sheriff.

Article 3.

Duties of Sheriff.

Sec.
162-13. To receipt for process.

ARTICLE 3.

Duties of Sheriff.

§ 162-13. To receipt for process.

Every sheriff or coroner shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (1848, c. 97; R.C., c. 105, s. 18; Code, s. 2081; Rev., s. 2816; C.S., s. 3935; 1995, c. 379, s. 14(d).)

Effect of Amendments. — The 1995 amendment, effective July 6, 1995, but not affecting pending litigation, substituted "sheriff or coroner" for "sheriff, coroner or constable".

ARTICLE 4.

County Prisoners.

§ 162-55. Injury to prisoner by jailer.

CASE NOTES

Criminal Negligence Required for Treble Damages. — A jailer's negligent failure to protect a prisoner from assaults by other inmates was not criminal conduct, absent any intent by jailer that the prisoner be harmed, and because only those acts amounting to crimes yield treble civil damages, prisoner would not be entitled to treble damages for such an assault. Letchworth v. Gay, 874 F. Supp. 107 (E.D.N.C. 1995).

Chapter 162A.

Water and Sewer Systems.

Article 1.

Water and Sewer Authorities.

Sec.
162A-4. Withdrawal from authority; joinder of new subdivision.
162A-5. Members of authority; organization; quorum.
162A-5.1. Political subdivision allowed to join certain authorities.
162A-6. Powers of authority generally.
162A-6.1. Privacy of employee personnel records.
162A-7. [Repealed.]
162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.
162A-14. Conveyances and contracts between political subdivisions and authority.

Article 5.

Metropolitan Sewerage Districts.

Sec.
162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.
162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.

Article 6.

County Water and Sewer Districts.

162A-86. Formation of district; hearing.
162A-87. Creation of district; standards; limitation of actions.
162A-87.1A. Initial boundaries of district.
162A-87.2. Abolition of water and sewer districts.
162A-88.1. Contracts with private entities.
162A-89. Governing body of district; powers.
162A-94. Certain actions validated.

ARTICLE 1.

Water and Sewer Authorities.

§ 162A-1. Title.

CASE NOTES

Authority Could Discriminate Regarding Rates. — Water and Sewer Authority formed pursuant to this section was subject to the common-law rule that it could not charge rates that would constitute an unwarranted discrimination among the parties it was formed to serve; however, based on a substantial difference between the position of one county vis-a-vis the Authority and the position of the other members, the Authority had the right to charge a rate to that county different from the rate it charged other members. In re Lower Cape Fear Water & Sewer Auth., 329 N.C. 675, 407 S.E.2d 155 (1991).

§ 162A-4. Withdrawal from authority; joinder of new subdivision.

(a) Whenever an authority has been organized under the provisions of this Chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located; provided, further, that any political subdivision authorized to join the authority by G.S. 162A-5.1 may do so without the consent of the authority.

(b) Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 162A-3 or 162A-3.1, as appropriate. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under G.S. 162A-3 or 162A-3.1, as appropriate, in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision if the authority was organized under G.S. 162A-3.

(c) A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, certified copies of the resolution of the governing bodies creating the authority consenting to such joining shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4; 1969, c. 850; 1971, c. 892, s. 1; c. 1093, s. 6; 1975, c. 224, s. 2; 1995, c. 207, s. 2; c. 509, s. 135.2(c).)

Effect of Amendments. — Session Laws 1995, c. 207, s. 2, effective June 8, 1995, added "provided, further, that any political subdivision authorized to join the authority by G.S. 153A-5.1 may do so without the consent of the authority" at the end of subsection (a).

Session Laws 1995, c. 509, s. 135.2(c), effective July 29, 1995, substituted "G.S. 162A-5.1" for "G.S. 153A-5.1" in subsection (a) as amended by Session Laws 1995, c. 207, s. 2.

§ 162A-5. Members of authority; organization; quorum.

(a) Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivision, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1 shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member. This subsection does not apply in the case of an authority that a city joins under G.S. 162A-5.1.

(b) Each authority organized under this Article that a city has joined under G.S. 162A-5.1 shall consist of the number of members provided by that section, such members to be selected as provided by that section. Two each of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring one year and two years respectively from the date on which the certificate of joinder was issued, and three of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring three years from the date on which the certificate of joinder was issued. Such designation shall be made by the authority by lot at the meeting where members take their oaths of office. Successor members shall each be appointed for a term of three years to commence on the day that the terms of the prior members' terms expire, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

(c) Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of two thousand dollars ($2,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850; 1971, c. 892, s. 1; 1975, c. 224, ss. 3, 4; 1995, c. 207, s. 3.)

Effect of Amendments. — The 1995 amendment, effective June 8, 1995, added the subsection (a) and (c) designations; added the last sentence in subsection (a); and added subsection (b).

§ 162A-5.1. Political subdivision allowed to join certain authorities.

(a) As used in this section, "city" means a city, town, or incorporated village.

(b) When an authority was organized under G.S. 162A-3.1 by one county and one city, and the majority of the authority's water customers are located within a city which is not the city that was one of the two original organizers, then that city may join the authority and appoint members as provided by this section.

(c) A city joining the authority under this section shall do so in accordance with the procedures of G.S. 162A-4. The resolution shall become effective upon the issuance of a certificate of joinder under G.S. 162A-4(c).

(d) When a city joins an authority under this section, then effective on a date set in the resolution, but not earlier than the first day of the second calendar month after the issuance of the certificate of joinder under G.S. 162A-4(c), the terms of office of all the members of the authority are terminated, and the authority shall consist of members appointed as follows:

(1) Two members appointed by the governing board of the city joining the authority under this section. These members must be residents of that city.

(2) One member appointed by the governing board of the city that was one of the two original organizers. That member must be a resident of that city.

(3) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by the authority's water system.

(4) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by a sewer system operated by the authority, but may not be a resident of a household served by the authority's water system.

(5) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by the authority's water system which is located outside the corporate limits of any municipality.

(6) One member appointed by the board of commissioners of the county that was one of the two original organizers. That member must be a resident of the city that has the second highest number of residential water customers served by the authority. (1995, c. 207, s. 1.)

Editor's Note. — Session Laws 1995, c. 207, s. 4, made this section effective upon ratification. The Act was ratified June 8, 1995.

§ 162A-6. Powers of authority generally.

Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of G.S. 162A-7, hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a

trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Planning Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article. (1955, c. 1195, s. 6; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 804; 1983, c. 525, s. 5; c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 981, s. 2; 1989, c. 517; 1993 (Reg. Sess., 1994), c. 696, s. 8.1; 1995, c. 509, s. 113; c. 511, s. 1.)

Editor's Note. —

Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, in the first sentence of subdivision (14c), inserted "or stormwater" preceding "into any sewerage system," and inserted "and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types."

Session Laws 1995, c. 509, s. 113, effective July 29, 1995, inserted "G.S." preceding "153A-196" in the last paragraph of subdivision (14a).

Session Laws 1995, c. 511, s. 1, effective July 29, 1995, added subdivision (14d).

§ 162A-6.1. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other law concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by an authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the authority with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the authority.

(b) The following information with respect to each authority employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in an authority employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) An authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The chief administrative officer, with concurrence of the authority, may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of an authority employee and the reasons for that personnel action. Before releasing the information, the chief administrative officer or authority shall determine in writing that the release is essential to maintaining public confidence in the administration of authority services or to maintaining the level and quality of authority services. This written determination shall be retained in the office of the chief administrative officer or the secretary of the authority, and is a record available for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the authority's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(e) The authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that that person will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the authority as long as each personnel file examined is retained.

(f) An authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee, who objects to material in his file on grounds that it is inaccurate or misleading, may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars ($500.00).

(h) Any person not specifically authorized by this section to have access to a personnel file designated as confidential, who shall:

(1) Knowingly and willfully examine in its official filing place; or

(2) Remove or copy

any portion of a confidential personnel file shall be guilty of a Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars ($500.00). (1993, c. 505, s. 1; 1994, Ex. Sess., c. 14, ss. 69, 70.)

Editor's Note. — Session Laws 1993, c. 505, s. 2 makes this section effective October 1, 1993.

Session Laws 1993, c. 505, s. 2 originally enacted subsections (d) through (h) as subsections (c1) through (f). The subsections were redesignated at the direction of the Revisor of Statutes.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars ($500.00)" for "misdemeanor and upon conviction shall be fined an amount not more than five hundred dollars ($500.00)" in subsection (g); and substituted "Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars ($500.00)" for "misdemeanor and, upon conviction, shall be fined in the discretion of the court, but not in excess of five hundred dollars ($500.00)" in subsection (h).

§ 162A-7: Repealed by Session Laws 1993, c. 348, s. 6, effective January 1, 1994.

Cross References. — As to regulation of surface water transfers, see now § 143-215.22I.

§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.

(a) An authority may establish and revise a schedule of rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by the authority. The rates, fees, and charges established under this subsection are not subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

Before an authority sets or revises rates, fees, or other charges for structural or natural stormwater and drainage system service, the authority shall hold a public hearing on the matter. At least seven days before the hearing, the authority shall publish notice of the public hearing in a newspaper having general circulation in the area. An authority may impose rates, fees, or other charges for stormwater and drainage system service on a person even though the person has not entered into a contract to receive the service.

Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

(1) To pay the cost of maintaining, repairing, and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

The fees established under this subsection must be made applicable throughout the service area. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection for stormwater and drainage system service may not exceed the authority's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may do the following in addition to exercising any other remedies which it may have:

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges.

(2) At the expiration of 30 days after any rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority.

(3) Specify the order in which partial payments are to be applied when a bill covers more than one service. (1955, c. 1195, s. 8; 1971, c. 892, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 45; 1991, c. 591, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 47.)

§ 162A-14. Conveyances and contracts between political subdivisions and authority.

The governing body of any political subdivision is hereby authorized and empowered:

(1) Pursuant to the provisions of G.S. 160A-274 and subject to the approval of the Local Government Commission, except for action taken hereunder by any State agency, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to by the governing body of such political subdivision and the authority;

a. For the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;

b. For the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities;

c. For shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract; and

d. For requiring the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the corporate limits of the political subdivision and located within a reasonable distance of any waterline or sewer connection line owned, leased as lessee, or operated by the authority to connect to the line and collecting, on behalf of the authority, charges for the connections and requiring, as a condition to the issuance of any development permit or building permit by the political subdivision, evidence that any impact fee by the authority has been paid by or on behalf of the applicant for the permit.

(3) To fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and

(4) In its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this Article. (1955, c. 1195, s. 13; 1971, c. 892, s. 1; 1975, c. 224, ss. 5, 6; 1995, c. 511, s. 2.)

Editor's Note. — Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Effect of Amendments. — The 1995

amendment, effective July 29, 1995, added subdivision (2)d.

ARTICLE 5.

Metropolitan Sewerage Districts.

§ 162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.

(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits. — The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

(1) If the district lies entirely within one county with a population of 25,000 or more, the board of commissioners of that county shall appoint to the district board three members who are qualified voters residing within the district. The initial members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Environmental Management Commission creating the district, and the board of commissioners shall designate the length of the term of each initial member. Successor members shall be appointed for a term of three years.

(1a) If the district lies entirely within one county with a population of less than 25,000, the board of commissioners of that county shall appoint to the district board five members who are qualified voters residing within the district. Of the initial members so appointed, one shall have a term expiring at the end of one year, two shall have terms expiring at the end of two years, and two shall have terms expiring at the end of three years from the date of adoption of the resolution of the Environmental Management Commission creating the district. In making initial appointments, the board of commissioners shall specify whether a member is to serve a term of one, two, or three years. Successor members shall be appointed for a term of three years.

(2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.

(3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one mem-

ber of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.

(4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.

(b) Appointment of Board for District Lying Wholly within City or Town Limits. — Any district lying entirely within the corporate limits of two or more cities or towns shall be governed by a district board consisting solely of members appointed by the governing bodies of such cities or towns and, in addition, one member elected by the appointed members of the district board. The governing body of each constituent city or town of the district shall appoint to the district board two qualified voters residing in the district and the city or town. The members so appointed shall elect, by majority vote, one additional member who shall be a qualified voter residing in the district and one of the constituent cities or towns.

One of the two members initially appointed by the governing body of each constituent city or town shall serve for a term which shall expire 30 days following the next regular election held for election of the governing body by which the member was appointed; and the other member shall serve for a term which shall expire two years thereafter. Successor members shall serve for a term of four years.

The member elected by the district board and his successors in office shall serve for a term of four years.

(c) Reappointment; Vacancies; Removal; Term. — Members of a district board may be reappointed. If a vacancy shall occur on a district board, the governing body which appointed the member who previously filled the vacancy shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed for cause by the governing board that appointed him. All members shall serve until their successors have been duly appointed and qualified.

(d) District Board Procedures. — Each member of the district board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The officers [offices] of secretary and treasurer may be combined. The district board may also appoint an assistant secretary and an assistant treasurer or, if the office is combined, an assistant secretary-treasurer who may, but need not, be members of the district board. The terms of office of the chairman, vice-chairman, secretary, treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed that compensation paid to members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of the board attended and for attendance at each regularly scheduled committee meeting of the board. The members of the district board may also be reimbursed the amount of actual expenses incurred by them in the performance of their duties. (1961, c. 795, s. 4; 1963, c. 471; 1973, c. 512, s. 2; c. 822, s. 4; c. 1262, s. 23; 1979, c. 471; 1983, c. 333, s. 2; 1991, c. 351, s. 1; 1995, c. 511, s. 2.1.)

Editor's Note. — Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Session Laws 1995, c. 511, effective July 29, 1995, in s. 8 provides: "The board of commissioners of a county that makes appointments to a metropolitan sewerage district board (i) that is in existence prior to the date this act becomes effective and (ii) the membership of which is increased from three to five as a result to the enactment of G.S. 162A-67(a)(1) by Section 2.1 of this act, shall appoint two additional members to the metropolitan sewerage district board within 90 days of the date this act becomes effective. The two additional members shall be appointed to initial terms:

"(1) Of at least one year each.

"(2) That expire on the same day and month that the terms of the three original members expire.

"(3) So that no more than two of the five terms shall expire in the same year."

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in subdivision (a)(1), in the first sentence added "with a population of 25,000 or more" and "of that county", and added "initial" twice in the second sentence; and added subdivision (a)(1a).

§ 162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.

(a) If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Environmental Management Commission a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

(1) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.

(2) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:

a. Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such services are provided within the rest of the district prior to inclusion of the new territory.

b. Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.

c. Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district proposes to finance the extension; the outstanding existing indebtedness of the district, if any; and the valuation of assessable property within the district and within the territory proposed to be included.

d. Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

(b) The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Environmental Management Commission hold a joint public meeting with the board or boards of commissioners concerning the inclusion of a political subdivision or an unincorporated area in the district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

(c) If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall determine that the inclusion of the political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of the district, including the political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district.

(d) If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the qualified voters residing in the district, requesting an election to be held therein on the question of including the political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Environmental Management Commission has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election.

(e) Notice of the resolution of the Environmental Management Commission, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 162A-66.

(f) Any action or proceeding in any court to set aside a resolution of the Environmental Management Commission or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon the ground that such resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

(g) Any political subdivision or unincorporated area included within an existing district by resolution of the Environmental Management Commission or by such resolution and election shall be subject to all debts of the district.

(h) The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

(i) Immediately following the inclusion of any additional political subdivision within an existing district, members representing such additional political subdivision shall be appointed to the district board in the manner provided in G.S. 162A-67. Any additional unincorporated area that is included within an existing district shall be represented by the members representing the county in which the unincorporated area lies except that:

(1) If inclusion of the additional unincorporated area extends the district into more than one county, members representing the unincorporated area in the new county shall be appointed in accordance with G.S. 162A-67(a)(2) immediately following the inclusion of the additional area.

(2) If the inclusion of the additional unincorporated area has the effect of changing the county in which the largest portion of the district lies, new members representing the county comprising the larger portion of the district shall be appointed in accordance with G.S. 162A-67(a)(2) immediately following the inclusion, and no reappointment shall be made by the county in which the lesser portion of the district lies upon expiration of the first term of a member representing that county following the inclusion.

The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 162A-67, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 162A-67. (1961, c. 795, s. 5; 1973, c. 512, s. 3; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 2; 1991 (Reg. Sess., 1992), c. 954, s. 1.)

§ 162A-81. Adoption and enforcement of ordinances.

CASE NOTES

Quoted in District Bd. of Metro. Sewerage Dist. v. Blue Ridge Plating Co., 110 N.C. App. 386, 430 S.E.2d 282 (1993).

ARTICLE 6.

County Water and Sewer Districts.

§ 162A-86. Formation of district; hearing.

(a) The board of commissioners of any county may create a county water and sewer district.

(a1) The governing board of a consolidated city-county, as defined by G.S. 160B-2(1), may create a water and sewer district pursuant to this Article. For the purposes of this Article, the term "board of county commissioners" shall also mean the governing board of a consolidated city-county and the term "county water and sewer district" also means a water and sewer district created by the governing board of a consolidated city-county.

(b) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once a week for three weeks in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published the first time not less than 20 days before the hearing.

(b1) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published not more than 30 nor less than 14 days before the hearing. The newspaper notice and the public hearing may cover more than one district covered by this subsection.

This subsection applies only when the local Health Director or the State Health Director has certified that there is a present or imminent serious public health hazard caused by the failure of a low-pressure pipe sewer system within the area of the proposed district, and in such case the board of commissioners may proceed either under subsection (a) of this section or under this subsection.

(c) At the public hearing, the commissioners shall hear all interested persons and may adjourn the hearing from time to time. (1977, c. 466, s. 1; 1979, c. 624, ss. 2, 3; 1993 (Reg. Sess., 1994), c. 696, s. 1; c. 714, s. 1; 1995, c. 461, s. 7.)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994) Chapter 696, effective July 6, 1994, and Chapter 714, effective July 7, 1994, made identical amendments to this section.

Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 696, s. 1, effective July 6, 1994, added subsection (b1).

Session Laws 1993 (Reg. Sess., 1994), c. 714, s. 1, effective July 7, 1994, added subsection (b1).

The 1995 amendment, effective July 19, 1995, added subsection (a1).

CASE NOTES

Cited in Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 162A-87. Creation of district; standards; limitation of actions.

(a) Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds that:

(1) There is a demonstrable need for providing in the district water services, or sewer services, or both;

(2) The residents of all the territory to be included in the district will benefit from the district's creation; and

(3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

Territory lying within the corporate limits of a city or town may not be included in the district unless the governing body of the city or town agrees by resolution to such inclusion. Otherwise, the board of commissioners may define as the district all or any portion of the territory described in the notice of the public hearing.

(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

"The foregoing resolution was adopted by the .... County Board of Commissioners on .... and was first published on ....

Any action or proceeding questioning the validity of this resolution or the creation of the .... Water and Sewer District of .... County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

....
Clerk, ... County Board of
Commissioners"

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period.

Notwithstanding any other provision of this section, in the case of any county water and sewer districts created under G.S. 162A-86(b1):

(1) A resolution may cover the creation of more than one district;
(2) The board of commissioners shall cause the resolution to be published once in the newspaper in which the notice of the hearing was published; and
(3) References in this subsection to "30 days" are instead "21 days". (1977, c. 466, s. 1; 1979, c. 624, s. 4; 1993 (Reg. Sess., 1994), c. 696, s. 2; c. 714, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) Chapter 696, effective July 6, 1994, and Chapter 714, effective July 7, 1994, made identical amendments to this section.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 696, s. 2, effective July 6, 1994, added the last paragraph of subsection (b).

Session Laws 1993 (Reg. Sess., 1994), c. 714, s. 2, effective July 7, 1994, added the last paragraph of subsection (b).

§ 162A-87.1A. Initial boundaries of district.

(a) The initial boundaries of a district may exclude areas contained solely within the external boundaries of the district.

(b) The initial boundaries of a district may include noncontiguous portions, as long as the closest distance from a noncontiguous piece to the part of the district containing the greatest area does not exceed one mile.

(c) This section does not invalidate any district created prior to the effective date of this section. (1993 (Reg. Sess., 1994), c. 696, s. 3; c. 714, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) Chapter 696, effective July 6, 1994, and Chapter 714, effective July 7, 1994, made identical enactments of this section.

Session Laws 1993 (Reg. Sess., 1994), c. 696, s. 9, made this section effective upon ratification. The act was ratified July 6, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 714, s. 9, made this section effective upon ratification. The act was ratified July 7, 1994.

§ 162A-87.2. Abolition of water and sewer districts.

(a) Upon finding that there is no longer a need for a water and sewer district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may, by resolution, abolish that district. The board of commissioners shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board of commissioners.

(b) If the:

(1) Terms of any contract between a county water and sewer district and a city provide that upon certain conditions, all the property of the district is conveyed to that city; and
(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

then such contract may also provide that no earlier than such conveyance the district may be abolished by action of the governing board of the city. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a city must provide for assumption of such other indebtedness by the city. If the district is owed any assessments, then the right to collect such assessments becomes that of the city. The governing board of the city shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the governing board. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(c) If the:
(1) Terms of any contract between a county water and sewer district and a private person provide that upon certain conditions, all the property of the district is conveyed to that private person; and
(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

such contract may also provide that no earlier than such conveyance the district may be abolished by action of the Utilities Commission. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a private person must provide for assumption of such other indebtedness by the private person. If the district is owed any assessments, then the private person may collect the assessment under the same procedures as if it was the district. The Utilities Commission shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the Utilities Commission. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(d) Any resolution of abolition adopted under this section on or after the effective date of this section shall be filed with the Secretary of State. (1985, c. 627, s. 2; 1993 (Reg. Sess., 1994), c. 696, s. 4; c. 714, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) Chapter 696, effective July 6, 1994, and Chapter 714, effective July 7, 1994, made identical amendments to this section.

Effect of Amendments. — Session Laws 1993 (Reg. Sess., 1994), c. 696, s. 4, effective July 6, 1994, added the subsection (a) designation, and added subsections (b), (c), and (d).

Session Laws 1993 (Reg. Sess., 1994), c. 714, s. 4, effective July 7, 1994, added the subsection (a) designation and added subsections (b), (c), and (d).

§ 162A-88. District is a municipal corporation.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) Chapter 696, effective July 6, 1994, and Chapter 714, effective July 7, 1994, made identical enactments of this section.

CASE NOTES

Purpose. — The very purpose of § 162A-88 is to clarify that a county water and sewer district created pursuant to § 162A-86 is effectively a municipal corporation. Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 162A-88.1. Contracts with private entities.

A county water and sewer district may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county water and sewer district is authorized by law to engage in. (1993 (Reg. Sess., 1994), c. 696, s. 5; c. 714, s. 5.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994) Chapter 696, effective July 6, 1994, and Chapter 714, effective July 7, 1994, made identical enactments of this section.

Session Laws 1993 (Reg. Sess., 1994), c. 696, s. 9, made this section effective upon ratification. The act was ratified July 6, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 714, s. 9, made this section effective upon ratification. The act was ratified July 7, 1994.

§ 162A-89. Governing body of district; powers.

(a) The board of commissioners of the county in which a county water and sewer district is created is the governing body of the district.

(b) The governing board of a consolidated city-county in which a water and sewer district is created is the governing body of the district. (1977, c. 466, s. 1; 1995, c. 461, s. 8.)

Editor's Note. — Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 19, 1995, added the subsection (a) designation, and added subsection (b).

§ 162A-94. Certain actions validated.

Any contract entered into by a county water and sewer district on or before February 1, 1995, is not invalid because of failure to comply with Article 8 of Chapter 143 of the General Statutes. (1995, c. 266, s. 1.)

Editor's Note. — Session Laws 1995, c. 266, s. 2, provides that this section is effective June 15, 1995 and shall not affect pending litigation.

Chapter 163.

Editor's Note. — The legislation and annotations affecting Chapter 163 have been included in a recently published replacement chapter.

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 2.

The General Statutes Commission.

Sec.

164-14. Membership; appointments; terms; vacancies.

Article 4.

Sentencing Commission.

(This Article expires July 1, 1997).

Sec.

164-38. (Effective until July 1, 1997) Terms of members; compensation; expenses.

ARTICLE 2.

The General Statutes Commission.

§ 164-14. Membership; appointments; terms; vacancies.

(a) The Commission shall consist of 12 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;
(2) One member, by the General Statutes Commission;
(3) One member, by the dean of the school of law of the University of North Carolina;
(4) One member, by the dean of the school of law of Duke University;
(5) One member, by the dean of the school of law of Wake Forest University;
(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
(7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
(8) Two members, by the Governor;
(9) One member, by the dean of the school of law of North Carolina Central University;
(10) One member by the president of the North Carolina Bar Association;
(11) One member, by the dean of the school of law of Campbell University.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the dean of the School of Law of Campbell University and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3; 1967, cc. 17, 1230; 1969, c. 541, s. 4; 1971, c. 1, ss. 1, 2; c. 76; 1975, c. 394, ss. 1, 2; 1977, c. 709, ss. 1, 2; 1991, c. 739, s. 33; 1995, c. 509, s. 119.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "Campbell University" for "Campbell College" in subdivision (a)(11) and subsection (c).

ARTICLE 4.

Sentencing Commission.

(This Article expires July 1, 1997)

Editor's Note. — This Article as originally enacted by Session Laws 1989 (Reg. Sess., 1990), c. 1076, was to expire July 1, 1992. This date was subsequently extended to July 8, 1993 by Session Laws 1991 (Reg. Sess., 1992), c. 812, s. 12 and c. 816, s. 1; to August 1, 1993, by Session Laws 1993, c. 253, s. 5.1; to July 1, 1994, by Session Laws 1993, c. 321, s. 200.1; to July 1, 1995, by Session Laws 1993 (Reg. Sess., 1994) c. 591, s. 6(a); and to July 1, 1997, by Session Laws 1995, c. 236, s. 1.

§ 164-36. (Effective until July 1, 1997) Powers and duties.

Editor's Note. —

Session Laws 1995, c. 236, s. 3, provides that, pursuant to G.S. 164-36 and G.S. 164-43, the Commission shall make a report of its recommendations, including any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly and the 1997 General Assembly.

§ 164-38. (Effective until July 1, 1997) Terms of members; compensation; expenses.

The terms of existing members shall expire on June 30, 1995, unless they resign or are removed. New members shall be appointed or the existing members reappointed by the appointing authorities to serve until July 1, 1997, unless they resign or are removed. Members serving by virtue of elective or appointive office or as designees of such officeholders may serve only so long as the officeholders hold those respective offices. Members appointed by the Speaker of the House and the President Pro Tempore of the Senate may be removed by the appointing authority without cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a hearing. Effective with respect to members designated on or after July 1, 1992, a person making a designation pursuant to G.S. 164-37 may not make another designation, except that the person's successor in elective or appointive office may make a new designation.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 3; 1993, c. 253, s. 5.1; c. 321, ss. 200.1(b); 1993 (Reg. Sess., 1994), c. 591, ss. 6(a), (b); 1995, c. 236, s. 1; c. 236, s. 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective June 30, 1994, in the first sentence substituted "1995" for "1993. New members shall be appointed or the existing members reappointed by the appointing authorities to serve until July 1, 1994."

The 1995 amendment, effective June 13, 1995, added the second sentence of the first paragraph.

§ 164-43. (Effective until July 1, 1997) Priority of duties; reports; continuing duties.

Editor's Note. —

Session Laws 1995, c. 236, s. 3, provides that, pursuant to G.S. 164-36 and G.S. 164-43, the Commission shall make a report of its recommendations, including any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly and the 1997 General Assembly.

Chapter 165.
Veterans.

Article 4.

Scholarships for Children of War Veterans.

Sec.
165-20. Definitions.
165-21. Scholarship.
165-22. Classes or categories of eligibility under which scholarships may be awarded.

Article 6.

Powers of Attorney.

165-39. Validity of acts of agent performed after death of principal.

Article 8.

State Veterans Home.

165-45. Short Title.
Sec.
165-46. Establishment.
165-47. Exemption from certificate of need.
165-48. North Carolina Veterans Home Trust Fund.
165-49. Funding.
165-50. Contracted operation of homes.
165-51. Program staff.
165-52. Admission and dismissal authority.
165-53. Eligibility and priorities.
165-54. Deposit required.
165-55. Report and budget.

ARTICLE 4.

Scholarships for Children of War Veterans.

§ 165-20. Definitions.

As used in this Article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) "Child" means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this Article, who has complied with the requirements of the Selective Service System, if applicable, and who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.

b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3)a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of 15 years.

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.

d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on May 7, 1975.

d1. Persian Gulf War, meaning the period beginning on August 2, 1990, and ending on the date prescribed by Presidential proclamation or concurrent resolution of the United States Congress.

e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1, of this Article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) "State educational institution" means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of Chapter 115A and Article 3 of Chapter 116 of the General Statutes of North Carolina, or the college program of the North Carolina School of the Arts, or any technical institute operated under the provisions of Chapter 115A of the General Statutes of North Carolina.

(7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service

during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2; 1971, c. 339; 1973, c. 620, s. 9; c. 755; 1975, c. 160, s. 1; 1977, c. 70, s. 27; 1985, c. 39, s. 2; c. 788; 1989, c. 767, s. 1; 1991, c. 549, s. 1.)

§ 165-21. Scholarship.

A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:
   a. Tuition,
   b. A reasonable board allowance,
   c. A reasonable room allowance,
   d. Matriculation and other institutional fees required to be paid as a condition to remaining in said institution and pursuing the course of study selected, excluding charges or fees for books, supplies, tools and clothing.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in G.S. 165-22.1(d).

(3) Only one scholarship may be granted pursuant to this Article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive.

(4) No educational assistance shall be afforded a child under this Article after the end of a 10-year period beginning on the date the scholarship is first awarded. Those persons who have been granted a scholarship under this Article prior to the effective date of this act shall be entitled to the remainder of their period of scholarship eligibility if used prior to August 1, 1999. Whenever a child is enrolled in an educational institution and the period of entitlement ends while enrolled in a term, quarter or semester, such period shall be extended to the end of such term, quarter or semester, but not beyond the entitlement limitation of four academic years. (1967, c. 1060, s. 8; 1969, c. 741, s. 3; 1975, c. 137, s. 1; 1989, c. 767, s. 2.)

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded.

A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent
  a. Was killed in action or died from wounds or other causes not due to his own wilful misconduct while a member of the armed forces during a period of war, or
  b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States Department of Veterans Affairs.

(2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and 165-21(2) of this Article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Department of Veterans Affairs. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Administration shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Administration, but, in no event shall it predate the date of the veteran parent's death.

(3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:
  a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, but less than one hundred percent (100%), as rated by the United States Department of Veterans Affairs, or
  b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Department of Veterans Affairs.

(4) Class III: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:
  a. Is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Department of Veterans Affairs, or
  b. Is deceased and who does not fall within the provisions of any other eligibility class described in G.S. 165-22(1), (2), (3), (4)a, nor (5) provided such child is less than 23 years of age at the time of application for such scholarship.

(5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the armed forces of the

United States in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power. (1967, c. 1060, s. 8; 1973, cc. 197, 577; c. 620, s. 9; 1975, c. 160, s. 2; c. 167, s. 1; 1977, c. 70, s. 27; 1989, c. 767, ss. 3, 4; 1991, c. 549, s. 2.)

ARTICLE 6.

Powers of Attorney.

§ 165-39. Validity of acts of agent performed after death of principal.

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the several states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. (1945, c. 980, s. 1; 1995, c. 379, s. 5.)

Effect of Amendments. — The 1995 amendment, effective July 6, 1995, but not affecting pending litigation, substituted "several states" for "48 states" in subdivision (ii).

ARTICLE 8.

State Veterans Home.

§ 165-45. Short Title.

This Article may be referred to as the "State Veterans Home Act". (1995, c. 346, s. 1.)

Editor's Note. — Session Laws 1995, c. 346, s. 3, made this Article effective upon ratification. The Act was ratified June 29, 1995.

§ 165-46. Establishment.

The State of North Carolina shall construct, maintain, and operate veterans homes for the aged and infirm veterans resident in this State under the administrative authority and control of the Division of Veterans Affairs of the Department of Administration. There is vested in such Division any and all powers and authority that may be necessary to enable it to establish and operate the homes and to issue rules necessary to operate the homes in compliance with applicable State and federal statutes and regulations. (1995, c. 346, s. 1.)

§ 165-47. Exemption from certificate of need.

Any state veterans home established by the Division of Veterans Affairs shall be exempt from the certificate of need requirements as set out in Article 9 of Chapter 131E, or as may be hereinafter enacted. (1995, c. 346, s. 1.)

§ 165-48. North Carolina Veterans Home Trust Fund.

(a) Establishment. — A trust fund shall be established in the State treasury, for the Division of Veterans Affairs, to be known as the North Carolina Veterans Home Trust Fund.

(b) Composition. — The trust fund shall consist of all funds and monies received by the Veterans Affairs Commission or the Division of Veterans Affairs from the United States, any federal agency or institution, and any other source, whether as a grant, appropriation, gift, contribution, bequest or individual reimbursement, for the care and support of veterans who have been admitted to a State veterans home.

(c) Use of Fund. — The trust fund created in subsection (a) of this section shall be used by the Division of Veterans Affairs:

(1) To pay for the care of veterans in said State veterans homes;

(2) To pay the general operating expenses of the State veterans homes, including the payment of salaries and wages of officials and employees of said homes; and

(3) To remodel, repair, construct, modernize, or add improvements to buildings and facilities at the homes.

(d) Miscellaneous. — The following provisions apply to the trust fund created in subsection (a) of this section:

(1) All funds deposited and all income earned on the investment or reinvestment of such funds shall be credited to the trust fund.

(2) Any monies remaining in the trust fund at the end of each fiscal year shall remain on deposit in the State treasury to the credit of the North Carolina Veterans Home Trust Fund.

(3) Nothing contained herein shall prohibit the establishment and utilization of special agency accounts by the Division of Veterans Affairs, as may be approved by the Veterans Affairs Commission, for the receipt and disbursement of personal funds of the State veterans homes' residents or for receipt and disbursement of charitable contributions for use by and for residents. (1995, c. 346, s. 1.)

§ 165-49. Funding.

(a) The Division of Veterans Affairs of the Department of Administration may apply for and receive federal aid and assistance from the United States Department of Veterans Affairs or any other agency of the United States Government authorized to pay federal aid to states for the construction and acquisition of veterans homes under Title 38, United States Code, section 8131 et seq., or for the care or support of disabled veterans in State veterans homes under Title 38, United Stated Code, section 1741 et seq., or from any other federal law for said purposes.

(b) The Division of Veterans Affairs may receive from any source any gift, contribution, bequest, or individual reimbursement, the receipt of which does not exclude any other source of revenue.

(c) All funds received by the Division shall be deposited in the North Carolina Veterans Home Trust Fund, except for any funds deposited into special agency accounts established pursuant to G.S. 165-48(d)(3). The Veterans Affairs Commission shall authorize the expenditure of all funds from the North Carolina Veterans Home Trust Fund. (1995, c. 346, s. 1.)

§ 165-50. Contracted operation of homes.

The Veterans Affairs Commission may contract with persons or other nongovernmental entities to operate each State veterans home. Contracts for the procurement of services to manage, administer, and operate any State veterans home shall be awarded on a competitive basis through the solicitation of proposals and through the procedures established by statute and the Division of Purchase and Contract. A contract may be awarded to the vendor whose proposal is most advantageous to the State, taking into consideration cost, program suitability, management plan, excellence of program design, key personnel, corporate or company resources, financial condition of the vendor, experience and past performance, and any other qualities deemed necessary by the Veterans Affairs Commission and set out in the solicitation for proposals. Any contract awarded under this section shall not exceed five years in length. The Veterans Affairs Commission is not required to select or recommend the vendor offering the lowest cost proposal but shall select or recommend the vendor who, in the opinion of the Commission, offers the proposal most advantageous to the veterans and the State of North Carolina. (1995, c. 346, s. 1.)

§ 165-51. Program staff.

The Division shall appoint and fix the salary of an Administrative Officer for the State veterans home program. The Administrative Officer shall be an honorably discharged veteran who has served in active military service in the armed forces of the United States for other than training purposes. The Administrative Officer shall direct the establishment of the State veterans home program, coordinate the master planning, land acquisition, and construction of all State veterans homes under the procedures of the Office of State Construction, and oversee the ongoing operation of said veterans homes. The Administrative Officer may hire one office assistant to help with clerical responsibilities. (1995, c. 346, s. 1.)

§ 165-52. Admission and dismissal authority.

The Veterans Affairs Commission shall have authority to determine administrative standards for admission and dismissal, as well as the medical conditions, of all persons admitted to and dismissed from any State veterans home, and to issue any necessary rules, subject to the requirements set out in G.S. 165-53. (1995, c. 346, s. 1.)

§ 165-53. Eligibility and priorities.

(a) To be eligible for admission to a State veterans home, an applicant shall meet the following requirements:

(1) The veteran shall have served in the active armed forces of the United States for other than training purposes;

(2) The veteran shall have been discharged from the armed forces under conditions other than dishonorable;

(3) The veteran shall be disabled by age, disease, or other reason as determined through a physical examination by a State veterans home physician; and

(4) The veteran shall have resided in the State of North Carolina for two years immediately prior to the date of application.

(b) Eligible veterans will be admitted into a State veterans home or place on waiting lists for admission into a home according to the following priorities:

(1) Eligible wartime veterans will receive priority over eligible nonwartime veterans and will be admitted to the first available bed capable of providing the level of care required. Eligible wartime veterans with equal care requirements will be ranked in chronological order based on the earliest date of receipt of the veteran's application for care.

(2) All other eligible veterans will be ranked in chronological order based on the earliest date of receipt of the veteran's application for care. If more than one application is received on the same date, the Administrative Officer will determine their sequential order on the list according to medical need.

(c) Nonveterans may occupy no more than twenty-five percent (25%) of the total beds in a State veterans home. When any space is available for nonveterans, priority will be established for the following relatives of eligible veterans in the following order:

(1) Spouse.

(2) Widow or widower whose spouse, if living, would be an eligible veteran.

(3) Gold Star parents, defined as the mother or father of a veteran who died an honorable death while in active service to the United States during time of war or emergency. (1995, c. 346, s. 1.)

§ 165-54. Deposit required.

Each resident of any State veterans home shall pay to the Division of Veterans Affairs the cost of maintaining his or her residence at the home. This deposit shall be placed in the North Carolina Veterans Home Trust Fund and shall be in an amount and in the form prescribed by the Veterans Affairs Commission in consultation with the Assistant Secretary for Veterans Affairs. (1995, c. 346, s. 1.)

§ 165-55. Report and budget.

(a) The Assistant Secretary for Veterans Affairs shall report annually to the Secretary of the Department of Administration on the activities of the State Veterans Homes Program. This report shall contain an accounting of all monies received and expended, statistics on residents in the homes during the year, recommendations to the Secretary, the Governor, and the General Assembly as to the program, and such other matters as may be deemed pertinent.

(b) The Assistant Secretary for Veterans Affairs, with the approval of the Veterans Affairs Commission, shall compile an annual budget request for any State funding needed for the anticipated costs of the homes, which shall be submitted to the Secretary of the Department of Administration. State appropriated funds for operational needs shall be made available only in the event that other sources are insufficient to cover essential operating costs. (1995, c. 346, s. 1.)

Chapter 166A.

Editor's Note. — The legislation and annotations affecting Chapter 166A have been included in a recently published replacement chapter.

Chapter 168.

Editor's Note. — The legislation and annotations affecting Chapter 168 have been included in a recently published replacement chapter.

Chapter 168A.

Editor's Note. — The legislation and annotations affecting Chapter 168A have been included in a recently published replacement chapter.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1995

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1995 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina